

On April 23, 1925, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13318. Adulteration of canned cherries. U. S. v. 17 Cartons and 36 Cartons of Cherries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 19909. I. S. Nos. 16325-v, 16376-v. S. No. E-5186.)

On March 18, 1925, the United States attorney for the Northern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 53 cartons of canned cherries, remaining in the original unbroken packages at Atlanta, Ga., alleging that the article had been shipped by S. E. Comstock & Co., from Fairport, N. Y., on or about November 15, 1924, and transported from the State of New York into the State of Georgia, and charging adulteration in violation of the food and drugs act. A portion of the article was labeled in part: (Can) "Orchard Farm Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Mt. Morris Canning Co. Mt. Morris, N. Y." The remainder of the said article was labeled in part: (Can) "Sweet Violet Brand Red Sour Pitted Cherries * * * Guaranteed And Distributed By Finger Lakes Canning Co., Inc. Penn Yan, N. Y."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On April 28, 1925, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13319. Alleged misbranding of butter. U. S. v. Monotti-Larimer. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 18579. I. S. No. 11728-v.)

On June 27, 1924, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Monotti-Larimer, a corporation, San Francisco, Calif., alleging shipment by said company, in violation of the food and drugs act as amended, on or about February 5, 1924, from the State of California to the Territory of Hawaii, of a quantity of butter which was alleged to be misbranded. The article was labeled in part: (Package) "Gold Medal Brand Pasteurized Butter * * * Monotti-Larimer, Distributors Net Contents 1 Lb."

Examination by the Bureau of Chemistry of this department of 294 packages from the consignment showed that the average net weight of the packages examined was 15.77 ounces.

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Net Contents 1 Lb.," borne on the packages containing the said article, was false and misleading, in that it represented that each of said packages contained 1 pound net of butter, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that each of said packages contained 1 pound net of butter, whereas each of said packages did not contain 1 pound net of butter but did contain a less amount. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 18, 1925, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel, the court delivered the following instructions to the jury (St. Sure, D. J.):

"GENTLEMEN OF THE JURY: I will try and be as brief as possible in my instructions to you. You have sat upon juries here in several cases and you have heard me from time to time deliver instructions upon various matters of law which it is my duty to give to you. It may be that you are already familiar with most of the principles of law which govern in cases of this kind.

"I have pointed out to you, I think, and it becomes my duty to do so again, that you are the exclusive judges of the facts. The court is to pass upon the law in the case and to give to you such rules of law as it deems proper for your